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Jack Daniel's Properties, Inc.

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA**

JACK DANIEL'S PROPERTIES, INC., a
Delaware corporation.

Case No.

Plaintiff,
vs.

COMPLAINT; DEMAND FOR JURY TRIAL

DYNASTY SPIRITS, INC., a Texas corporation,
BUFFALO BAYOU DISTILLERIES, LLC
D/B/A GULF COAST DISTILLERS, a Texas
limited liability company,

Defendants.

1 Plaintiff Jack Daniel's Properties, Inc. ("JDPI"), for its complaint against Defendants Dynasty
 2 Spirits, Inc. ("Dynasty") and Buffalo Bayou Distilleries, LLC d/b/a Gulf Coast Distillers ("Buffalo
 3 Bayou") (together, "Defendants") alleges as follows:

4 **PARTIES**

5 1. Plaintiff JDPI is a corporation organized and existing under the laws of the State of
 6 Delaware, with its principal place of business in San Rafael, California.

7 2. Upon information and belief, defendant Dynasty Spirits, Inc. is a corporation
 8 organized and existing under the laws of the State of Texas, with its principal place of business in
 9 Dallas, Texas.

10 3. Upon information and belief, defendant Buffalo Bayou Distilleries, LLC is a Texas
 11 limited liability company organized and existing under the laws of the State of Texas, with its
 12 principal place of business in Houston, Texas. In doing the things and carrying out the acts and
 13 omissions alleged herein, Buffalo Bayou Distilleries, LLC sometimes operated under the name "Gulf
 14 Coast Distillers."

15 **JURISDICTION AND VENUE**

16 4. This is an action for infringement of federally registered trademarks and federally-
 17 registered trade dress, in violation of 15 U.S.C. § 1114(1); for trade dress infringement in violation of
 18 15 U.S.C. § 1125(a)(1); for dilution of trademarks in violation of 15 U.S.C. § 1125(c); for dilution of
 19 trade dress in violation of 15 U.S.C. § 1125(c); for false advertising in violation of 15 U.S.C. §
 20 1125(a)(1)(B); for trademark infringement under California law; for trade dress infringement under
 21 California law; for trademark dilution under California law; for trade dress dilution under California
 22 law; and for trademark infringement, trade dress infringement, and unfair competition under
 23 California law. The Court has jurisdiction over the subject matter of plaintiff's claims for relief
 24 arising under the United States Trademark Act pursuant to 15 U.S.C. § 1121 and 28 U.S.C. §
 25 1338(a). The Court has original or supplemental jurisdiction over the subject matter of plaintiff's
 26 claims for relief under state law pursuant to 28 U.S.C. §§ 1338(b) and 1367.

27 5. The Court has personal jurisdiction over Defendants because they do business in the
 28 State of California by, among other things, selling products, including the unlawful products at issue

1 in this action. On information and belief, Defendants cause the unlawful products to be sold to
2 distributors in California and elsewhere for resale by retailers in California, including within this
3 Judicial District.

4 6. Venue is proper in this Court under 28 U.S.C. Section 1391(b)(1) and (2) and Section
5 1391(c) because a substantial part of the events giving rise to the claims asserted herein occurred in
6 this Judicial District.

7 **INTRADISTRICT ASSIGNMENT**

8 7. This action will be assigned on a district-wide basis pursuant to Civil Local Rule 3-
9 2(c).

10 **ALLEGATIONS COMMON TO ALL CLAIMS FOR RELIEF**

11 **The Jack Daniel's Trademarks and Trade Dress**

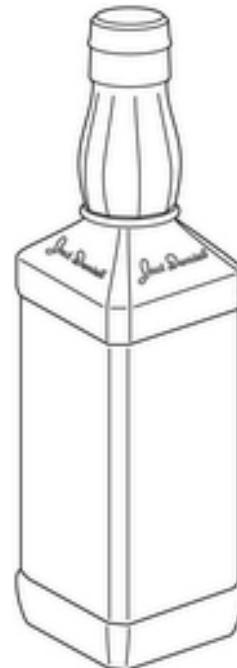
12 8. JDPI owns and licenses the use of the trademarks and trade dress used in connection
13 with Jack Daniel's Tennessee whiskey and other Jack Daniel's products. Tennessee whiskey has
14 been sold in the United States under the JACK DANIEL'S mark continuously since 1875, except
15 during Prohibition, making Jack Daniel's Tennessee whiskey one of the oldest, longest-selling, and
16 most iconic consumer products in American history.

17 9. Since long prior to the commencement of Defendants' acts of infringement, dilution,
18 and unfair competition complained of herein, and continuously to the present, Jack Daniel's
19 Tennessee whiskey has been sold in packaging embodying an iconic trade dress consisting of a
20 square bottle with angled shoulders, beveled corners, and a ribbed neck, a black cap, a black neck
21 wrap closure with white printing bearing the OLD. NO. 7 mark, and a label with a white on black
22 color scheme bearing the JACK DANIEL'S mark depicted in arched lettering at the top of the label,
23 and the words "Tennessee Sour Mash Whiskey" in the lower portion of the label, with the word
24 "Tennessee" depicted in script (the "Jack Daniel's Trade Dress"). Although minor changes have
25 been made in the Jack Daniel's Trade Dress over the years, it has conveyed a consistent commercial
26 impression for many decades. The Jack Daniel's Trade Dress is depicted below:

27 //
28 //



10. JDPI owns numerous federal registrations for certain elements of the Jack Daniel's Trade Dress for distilled spirits, including whiskey. These include United States Trademark Registration No. 4,106,178 for the three-dimensional configuration shown below of a square bottle container for "distilled spirits,"



1 United States Trademark Registration No. 4,106,179 for the mark shown below for “distilled spirits,”



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8 United States Trademark Registration No. 1,923,981 for the word mark JACK DANIEL'S for
9 “whiskey,” and United States Trademark Registration No. 582,789 for the stylized mark JACK
10 DANIEL'S shown below for “whiskey” (collectively, the “JDPI Trademarks”):



11
12 Copies of the certificates of registration of these marks are attached hereto as **Exhibit 1**. These
13 registrations are valid and subsisting and have become incontestable.
14

15 11. JDPI's predecessors-in-interest and licensees have expended many hundreds of
16 millions of dollars over many decades advertising and promoting Tennessee whiskey under the JDPI
17 Trademarks and the Jack Daniel's Trade Dress in the United States. Such advertising and promotion
18 have taken place in the print and electronic media, over the Internet, on billboards, on stadium
19 signage, in film and television productions, and in a variety of other manners. The primary print
20 advertising campaign for Jack Daniel's Tennessee whiskey, which has prominently featured the Jack
21 Daniel's Trade Dress, commenced in 1955 and has continued since then, making the campaign one of
22 the longest continuous consumer advertising campaigns in American history. Jack Daniel's
23 Tennessee whiskey featuring the Jack Daniel's Trade Dress has been seen in numerous motion
24 pictures and television programs viewed by many millions of Americans, and has also received
25 extensive unsolicited media coverage and public exposure as the unofficial drink of choice of
26 celebrities such as Frank Sinatra and George Clooney.

1 12. JDPI's predecessors-in-interest and licensees have achieved billions of dollars in sales
 2 of Jack Daniel's Tennessee whiskey in the United States under the JDPI Trademarks and the Jack
 3 Daniel's Trade Dress. Jack Daniel's Tennessee whiskey is currently the best-selling whiskey in the
 4 United States, and the JACK DANIEL'S brand has consistently been ranked among the world's most
 5 successful and valuable alcoholic beverage brands.

6 13. The Jack Daniel's Trade Dress is inherently distinctive, or achieved acquired
 7 distinctiveness long prior to the commencement of Defendants' acts of infringement, dilution, and
 8 unfair competition complained of herein by virtue of extensive sales and advertising of Jack Daniel's
 9 Tennessee whiskey featuring the Jack Daniel's Trade Dress, decades of consumption by the public of
 10 Jack Daniel's Tennessee whiskey packaged in the Jack Daniel's Trade Dress, extensive consumer
 11 recognition of the Jack Daniel's Trade Dress, and association of the Jack Daniel's Trade Dress with
 12 Jack Daniel's Tennessee whiskey. The combination of elements comprising the Jack Daniel's Trade
 13 Dress is non-functional because it is not essential to the use or purpose of Jack Daniel's Tennessee
 14 whiskey and does not affect the cost or quality of the product.

15 14. The JDPI Trademarks and the Jack Daniel's Trade Dress are famous in the United
 16 States for whiskey and distilled spirits, and they became famous long prior to Defendants' acts of
 17 infringement, dilution, and unfair competition alleged herein. The Jack Daniel's Trade Dress has
 18 been adjudicated famous in the United States within the meaning of 15 U.S.C. § 1125(c)(2)(A).

19 **Defendants' Infringement of the Jack Daniel's Trademarks and Trade Dress**

20 15. On information and belief, Defendants produce and sell the bourbon whiskies shown
 21 in **Exhibit 2** (collectively, the "Accused Whiskies"), including the Tennessee sour mash whiskey
 22 shown below (the "Accused Tennessee Whiskey").

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16. The Accused Whiskies all feature a square bottle with angled shoulders, beveled
corners, and a ribbed neck (the "Accused Bottle"). The Accused Tennessee Whiskey also features a
black cap, a black neck wrap closure, and a black label bearing the LONEHAND mark in arched
lettering at the top of the label, with the word "whiskey" in script, and the words Tennessee Sour
Mash in the lower portion of the label (together with the Accused Bottle, the "Accused Trade Dress").

17. On information and belief, Defendant Dynasty Spirits, Inc. owns the Accused Trade
Dress, in addition to distilling, advertising, and marketing the Accused Tennessee Whiskey. On
information and belief, Defendant Buffalo Bayou Distilleries, LLC, is primarily responsible for
labelling, packaging, and shipping the Accused Whiskies in the Accused Trade Dress and Accused
Bottle. Defendants have pursued a pattern of conduct and an intentional business strategy designed to
mislead and deceive consumers into believing that the Accused Whiskies are made, put out, licensed
or sponsored by, or affiliated or associated with, Jack Daniel's and thereby to unjustly enrich
themselves by capitalizing on the goodwill inherent in the JDPI Trademarks and the Jack Daniel's
Trade Dress.

1 18. The parties advertise and promote their respective products in the same marketing
 2 channels. Likewise, they distribute and sell them in the same channels of trade to the same classes of
 3 customers. The Accused Tennessee Whiskey and Jack Daniel's Tennessee whiskey inhabit the exact
 4 same product category, namely, Tennessee sour mash whiskey.

5 19. On information and belief, Defendants and their agents have instructed retailers to
 6 display the Accused Tennessee Whiskey adjacent to Jack Daniel's Tennessee whiskey and to use
 7 promotional materials that employ elements of the Jack Daniels Trade Dress, including white on
 8 black shading and arched lettering, such as shown below:



18 20. When Defendants began using the Accused Trade Dress and Accused Bottle, they
 19 knew about the famous JDPI Trademarks and the famous Jack Daniel's Trade Dress. Upon
 20 information and belief, Defendants intentionally and willfully adopted the Accused Trade Dress and
 21 Accused Bottle to trade upon the goodwill in the JDPI Trademarks and the Jack Daniel's Trade
 22 Dress.

23 21. The Jack Daniel's Trade Dress, on the one hand, and the Accused Trade Dress and
 24 Accused Bottle, on the other hand, convey a very similar impression in the marketplace, such that
 25 consumers of the parties' respective products are likely to believe that they come from the same
 26 source, or otherwise share a common sponsorship or affiliation. Defendants' use of the Accused
 27 Trade Dress and Accused Bottle in connection with whiskey, and the merchandising thereof, is likely
 28 to cause consumers and prospective purchasers of the Accused Whiskies to believe mistakenly that

1 || they originate with, or are licensed, authorized, or sponsored by, the owner of the JDPI Trademarks
 2 || and the Jack Daniel's Trade Dress, and/or that there is a business relationship, affiliation, connection,
 3 || or association, between Defendants and the owner of the JDPI Trademarks and the Jack Daniel's
 4 || Trade Dress.

5 22. Defendants' use of the Accused Trade Dress is also likely to dilute the famous JDPI
 6 Trademarks and the famous Jack Daniel's Trade Dress by blurring and by tarnishment. The
 7 similarities of the Accused Trade Dress and the Jack Daniel's Trade Dress have impaired, and will
 8 continue to impair, the distinctive quality of the Jack Daniel's Trade Dress in the marketplace. In
 9 addition, although only recently introduced, the Accused Tennessee Whiskey has already received
 10 highly critical customer reviews, indicating that said product is of inferior quality. Examples of these
 11 reviews include the following:

12 On April 4, 2018, a reviewer wrote: "[T]he worst whiskey or bourbon i have ever
 13 had. taste likea word that total wine wont let me post, even with coke. . . . this
 14 is pure urine in a bottle . i will not even give this to people i dont like . its bad ...
 bad.....bad. do not buy unless its a joke gift i will be dumping out ...its that bad."

15 On April 5, 2018, a reviewer wrote: "I tried this as a cheaper alternative to Jack.
 16 I should have stuck with Evan Williams. This whiskey does not appeal to me. I
 17 have tried it chilled, on the rocks, with water, neat and out of the freezer. Stuff
 18 that comes out of a plastic bottle tastes better. Just not for me. There's an aftertaste
 that I can't describe, But there are no hints of vanilla or caramel, doesn't even go
 good with a cigar."

19 On April 8, 2018, a reviewer wrote: "Do not recommend this as a cheaper
 20 alternative to Jack Daniels. Weird aftertaste even with a mixer. If I could return
 21 this I would."

22 On April 14, 2018, a reviewer wrote: "I bought a 750 of this on whim at the
 23 register to see if it was an adequate substitute for Jack Daniels. . . . It has been
 24 awful in every presentation. The initial wash across the tastebuds is unpleasant
 and the aftertaste is worse. . . . The remainder is going down the drain. I'd be
 ashamed to even offer this at parties to people who don't know any better."

25 On April 19, 2018, a reviewer wrote: "Swill – Compared to Jack Daniels by a
 26 store employee (but at a bargain price!). This is to Jack Daniels what a pogo stick
 27 is to a BMW. Avoid. I wouldn't make whiskey sour with this stuff. Further, it
 28 inclines me to shoo away store employees trying to offer guidance on anything
 beverage related. If your buyer made a mistake, punish the buyer not the
 customers."

1 Association with the Accused Tennessee Whiskey has harmed and will, unless enjoined by this
 2 Court, continue to harm the carefully-nurtured, high quality reputation of Jack Daniel's Tennessee
 3 whiskey and the famous JDPI Trademarks and Jack Daniel's Trade Dress among consumers and
 4 prospective consumers, thereby causing JDPI irreparable injury.

5 23. Finally, Defendants have unlawfully marketed the Accused Tennessee Whiskey using
 6 a false and misleading representation of fact on the Accused Trade Dress. In particular, the front
 7 label of the Accused Tennessee Whiskey states "Estd. 1983" (the "Accused Statement"), as shown
 8 below:



17 As a result of the Accused Statement, consumers are likely to believe incorrectly that the Accused
 18 Tennessee Whiskey, its distiller, and/or its brand were "established" in 1983. On information and
 19 belief, neither the Accused Tennessee Whiskey, nor its distiller, nor its brand were "established" in
 20 1983. On information and belief, Defendant Dynasty Spirits, Inc. was incorporated in 2012,
 21 Defendant Buffalo Bayou Distilleries, LLC was formed in 2014, and the LONEHAND brand was
 22 first used in commerce this year. By making the Accused Statement, Defendants have materially and
 23 deliberately deceived consumers about their history, brand, and Accused Tennessee Whiskey. In
 24 doing so, Defendants have attempted to gain market share for their Accused Tennessee Whiskey at
 25 the expense of Jack Daniel's Tennessee whiskey.

FIRST CLAIM FOR RELIEF

(Infringement of Federally-Registered Trademarks and Federally-Registered Trade Dress)

27 24. JDPI repeats and realleges the above allegations as if fully set forth herein.
 28

1 25. Defendants' use of the Accused Trade Dress and Accused Bottle in the manufacture,
 2 advertisement, promotion, display, shipment, offering for sale, sale, and distribution of the Accused
 3 Whiskies as aforesaid constitute the use in commerce, on or in connection with Defendants' goods, of
 4 reproduction, copies, or colorable imitation of JDPI's federally registered trademarks and federally
 5 registered trade dress, which is likely to cause confusion, to cause mistake, or to deceive, in violation
 6 of § 32(1) of the United States Trademark Act, 15 U.S.C. § 1114(1).

7 26. Defendants' willful and deliberate infringement of JDPI's federally-registered
 8 trademarks and federally-registered trade dress as aforesaid has caused and is likely to continue to
 9 cause substantial injury to the public and to JDPI, and JDPI is entitled to injunctive relief and its
 10 attorneys' fees and costs under §§ 32, 34, 35, and 36 of the United States Trademark Act, 15 U.S.C.
 11 §§ 1114, 1116, 1117, and 1118.

12 27. Defendants' infringement of JDPI's federally-registered trademarks and federally-
 13 registered trade dress as aforesaid has caused and is likely to continue to cause irreparable harm to
 14 JDPI. Unless restrained and enjoined by this Court, Defendants will persist in their infringement,
 15 thereby causing JDPI further irreparable harm.

16 28. JDPI has no adequate remedy at law.

SECOND CLAIM FOR RELIEF

(Trade Dress Infringement in Violation of Federal Law)

19 29. JDPI repeats and realleges the above allegations as if fully set forth herein.

20 30. Defendants' use of the Accused Trade Dress and Accused Bottle in the manufacture,
 21 advertisement, promotion, display, shipment, offering for sale, sale, and distribution of the Accused
 22 Product as aforesaid constitute infringement of the Jack Daniel's Trade Dress through use in
 23 commerce, in connection with Defendants' goods, of a combination of symbols or devices, a false
 24 designation or origin, and a false or misleading description of fact, that is likely to cause confusion,
 25 or to cause mistake, or to deceive, as to the origin, sponsorship, or approval of Defendants' use of the
 26 Accused Trade Dress and Accused Bottle and commercial activities with or by JDPI, in violation of §
 27 43(a)(1) of the United States Trademark Act, 15 U.S.C. § 1125(a)(1).

28 //

1 31. Defendants' willful and deliberate infringement of the Jack Daniel's Trade Dress as
 2 aforesaid has caused and is likely to continue to cause substantial injury to the public and to JDPI,
 3 and JDPI is entitled to injunctive relief and its attorneys' fees and costs under §§ 32, 34, 35, and 36 of
 4 the United States Trademark Act, 15 U.S.C. §§ 1114, 1116, 1117, and 1118.

5 32. Defendants' infringement of the Jack Daniel's Trade Dress as aforesaid has caused
 6 and is likely to continue to cause irreparable harm to JDPI. Unless restrained and enjoined by this
 7 Court, Defendants will persist in their infringement, thereby causing JDPI further irreparable harm.

8 33. JDPI has no adequate remedy at law.

THIRD CLAIM FOR RELIEF

(Dilution of JDPI Trademarks in Violation of Federal Law)

11 34. JDPI repeats and realleges the above allegations as if fully set forth herein.

12 35. Defendants' use of the Accused Trade Dress in the manufacture, advertisement,
 13 promotion, display, shipment, offering for sale, sale, and distribution of the Accused Tennessee
 14 Whiskey as aforesaid is likely to cause dilution by blurring and by tarnishment of the JDPI
 15 Trademarks, which became famous in California and throughout the United States before Defendants
 16 commenced their use of the Accused Trade Dress, by eroding the public's exclusive identification of
 17 the famous JDPI Trademarks with JDPI, lessening the capacity of the famous JDPI Trademarks to
 18 identify and distinguish the goods and services sold under and connection with it, and otherwise
 19 harming the reputation of said trademarks, in violation of § 43(c) of the United States Trademark Act,
 20 15 U.S.C. § 1125(c).

21 36. Upon information and belief, Defendants willfully and deliberately intended to trade
 22 on the reputation and goodwill of the JDPI Trademarks, or to cause dilution of the JDPI Trademarks.

23 37. Defendants have diluted and are likely to continue to dilute the distinctiveness of the
 24 famous JDPI Trademarks, and JDPI is entitled to injunctive relief and its attorneys' fees and costs
 25 under §§ 34, 35, 36, and 43(c) of the United States Trademark Act, 15 U.S.C. §§ 1116, 1117, 1118,
 26 and 1125(c).

27 //

28 //

38. Defendants' dilution of the JDPI Trademarks as aforesaid has caused and continues to cause irreparable harm to JDPI. Unless restrained and enjoined by this Court, Defendants will persist in their dilution, thereby causing JDPI further irreparable harm.

39. JDPI has no adequate remedy at law.

FOURTH CLAIM FOR RELIEF

(Dilution of Jack Daniel's Trade Dress in Violation of Federal Law)

40. JDPI repeats and realleges the above allegations as if fully set forth herein.

41. Defendants' use of the Accused Trade Dress in the manufacture, advertisement, promotion, display, shipment, offering for sale, sale, and distribution of the Accused Tennessee Whiskey as aforesaid is likely to cause dilution by blurring and by tarnishment of the Jack Daniel's Trade Dress, which became famous in California and throughout the United States long before Defendants commenced their use of the Accused Trade Dress, by eroding the public's exclusive identification of the famous Jack Daniel's Trade Dress with JDPI, lessening the capacity of the famous JDPI Trade Dress to identify and distinguish the goods and services sold under and connection with it, and otherwise harming the reputation of the famous JDPI Trade Dress, in violation of § 43(c) of the United States Trademark Act, 15 U.S.C. § 1125(c).

42. Upon information and belief, Defendants willfully and deliberately intended to trade on the reputation and goodwill of the Jack Daniel's Trade Dress, or to cause dilution of the Jack Daniel's Trade Dress.

43. Defendants have diluted and are likely to continue to dilute the distinctiveness of the famous Jack Daniel's Trade Dress, and JDPI is entitled to injunctive relief and its attorneys' fees and costs under §§ 34, 35, 36, and 43(c) of the United States Trademark Act, 15 U.S.C. §§ 1116, 1117, 1118, and 1125(c).

44. Defendants' dilution of the Jack Daniel's Trade Dress as aforesaid has caused and continues to cause irreparable harm to JDPI. Unless restrained and enjoined by this Court, Defendants will persist in their dilution, thereby causing JDPI further irreparable harm.

45. JDPI has no adequate remedy at law.

11

FIFTH CLAIM FOR RELIEF

(False Advertising in Violation of Federal Law)

46. JDPI repeats and realleges the above allegations as if fully set forth herein.

47. Defendants' use of the Accused Trade Dress in the manufacture, advertisement, promotion, display, shipment, offering for sale, sale, and distribution of the Accused Tennessee Whiskey as aforesaid constitutes false advertising in violation of 15 U.S.C.A. § 1125(a)(1)(B).

7 48. The Accused Statement is a false and misleading representation of fact concerning
8 Defendants' history, commercial activities, and Accused Tennessee Whiskey. As a result of the
9 Accused Statement, consumers will falsely believe that the Accused Tennessee Whiskey, its distiller,
10 and/or its brand were "established" in 1983.

11 49. The Accused Statement is material, and consumers will rely on it. The Accused
12 Statement lends an imprimatur of pedigree and legitimacy to the Accused Tennessee Whiskey that it
13 otherwise lacks. As a result of the Accused Statement, consumers are more likely to purchase the
14 Accused Tennessee Whiskey than they otherwise would be.

15 50. On information and belief, Defendants intend the Accused Statement to persuade
16 consumers to purchase the Accused Tennessee Whiskey instead of Jack Daniel's Tennessee whiskey,
17 and some consumers have purchased the Accused Tennessee Whiskey instead of Jack Daniel's
18 Tennessee whiskey because of the Accused Statement, as well as Defendant's other acts of
19 infringement and unfair competition alleged herein.

20 51. Defendants' false advertising as aforesaid has caused irreparable harm to JDPI.
21 Unless restrained and enjoined by this Court, Defendants will persist in their false advertising as
22 aforesaid, thereby causing JDPI further irreparable harm.

52. JDPI has no adequate remedy at law.

SIXTH CLAIM FOR RELIEF

(Trademark Dilution in Violation of California Law)

53. JDPI repeats and realleges the above allegations as if fully set forth herein.

27 54. Defendants' use of the Accused Trade Dress in the manufacture, advertisement,
28 promotion, display, shipment, offering for sale, sale, and distribution of the Accused Tennessee

1 Whiskey as aforesaid in commerce in California began long after the JDPI Trademarks became well-known, distinctive, and famous in California and throughout the United States, and dilutes the
2 distinctive quality of the JDPI Trademarks, in violation of Cal. Bus. & Prof. Code § 14247.
3

4 55. Upon information and belief, Defendants willfully intended to trade on the reputation
5 and goodwill associated with the JDPI Trademarks and to cause dilution of the JDPI Trademarks.
6

7 56. Defendants' dilution of the JDPI Trademarks as aforesaid has caused irreparable harm
8 to JDPI. Unless restrained and enjoined by this Court, Defendants will persist in their dilution,
9 thereby causing JDPI further irreparable harm.

10 57. JDPI has no adequate remedy at law.

11 **SEVENTH CLAIM FOR RELIEF**

12 **(Trade Dress Dilution in Violation of California Law)**

13 58. JDPI repeats and realleges the allegations in the above paragraphs as if fully set forth
herein.

14 59. Defendants' use of the Accused Trade Dress in the manufacture, advertisement,
15 promotion, display, shipment, offering for sale, sale, and distribution of the Accused Tennessee
16 Whiskey as aforesaid in California began long after the Jack Daniel's Trade Dress became well-known, distinctive, and famous in California and throughout the United States, and dilutes the
17 distinctive quality of the Jack Daniel's Trade Dress, in violation of Cal. Bus. & Prof. Code § 14247.
18

19 60. Upon information and belief, Defendants willfully intended to trade on the reputation
20 and goodwill associated with the Jack Daniel's Trade Dress and to cause dilution of the Jack Daniel's
21 Trade Dress.

22 61. Defendants' dilution of the Jack Daniel's Trade Dress as aforesaid has caused
irreparable harm to JDPI. Unless restrained and enjoined by this Court, Defendants will persist in
23 their dilution, thereby causing JDPI further irreparable harm.
24

25 62. JDPI has no adequate remedy at law.

26 **EIGHTH CLAIM FOR RELIEF**

27 **(Common Law Trademark Infringement and Unfair Competition)**

28 63. JDPI repeats and realleges the above as if fully set forth herein.

64. Defendants' use of the Accused Trade Dress and Accused Bottle in the manufacture, advertisement, promotion, display, shipment, offering for sale, sale, and distribution of the Accused Whiskies as aforesaid constitutes infringement of the JDPI Trademarks and unfair competition at common law.

65. Defendants' trademark infringement and unfair competition as aforesaid has caused irreparable harm to JDPI. Unless restrained and enjoined by this Court, Defendants will persist in their trademark infringement and unfair competition as aforesaid, thereby causing JDPI further irreparable harm.

66. JDPI has no adequate remedy at law.

NINTH CLAIM FOR RELIEF

(Common Law Trade Dress Infringement and Unfair Competition)

67. JDPI repeats and realleges the above allegations as if fully set forth herein.

68. Defendants' use of the Accused Trade Dress and Accused Bottle in the manufacture, advertisement, promotion, display, shipment, offering for sale, sale, and distribution of the Accused Whiskies as aforesaid constitutes infringement of the Jack Daniel's Trade Dress and unfair competition at common law.

69. Defendants' trade dress infringement and unfair competition as aforesaid has caused irreparable harm to JDPI. Unless restrained and enjoined by this Court, Defendants will persist in their trade dress infringement and unfair competition as aforesaid, thereby causing JDPI further irreparable harm.

70. JDPI has no adequate remedy at law.

TENTH CLAIM FOR RELIEF

(Unfair Competition in Violation of California Law)

71. JDPI repeats and realleges the above allegations as if fully set forth herein.

72. Defendants' use of the Accused Bottle and Accused Trade Dress, including the Accused Statement, in the manufacture, advertisement, promotion, display, shipment, offering for sale, sale, and distribution of the Accused Whiskies as aforesaid constitutes trademark infringement,

1 || trade dress infringement, false advertising, and unfair competition in violation of Cal. Bus. & Prof.
2 || Code § 17200 *et seq.*, including Cal. Bus. & Prof. Code § 17203.

3 73. Defendants' trademark infringement, trade dress infringement, false advertising, and
4 unfair competition as aforesaid has caused irreparable harm to JDPI. Unless restrained and enjoined
5 by this Court, Defendants will persist in their trademark infringement, trade dress infringement, false
6 advertising, and unfair competition as aforesaid, thereby causing JDPI further irreparable harm.

74. JDPI has no adequate remedy at law.

PRAAYER FOR RELIEF

WHEREFORE, plaintiff JDPI prays for judgment as follows:

10 1. That defendants Dynasty Spirits, Inc. and Buffalo Bayou Distilleries, LLC, and their
11 respective owners, officers, agents, servants, employees, and attorneys, and all other persons in active
12 concert or participation with them, or any of them, who receive actual notice of the injunctions
13 prayed for herein by personal service or otherwise, be preliminarily and then permanently restrained
14 and enjoined from:

15 (a) Manufacturing, advertising, promoting, displaying, shipping, offering for sale, selling,
16 or distributing the Accused Whiskies bearing the Accused Trade Dress, using the Accused Bottle, or
17 displaying the Accused Statement;

18 (b) Manufacturing, advertising, promoting, displaying, shipping, offering for sale, selling,
19 or distributing any other alcoholic beverage bearing the Accused Trade Dress or using the Accused
20 Bottle, or any other copy, reproduction, or colorable imitation of JDPI's registered trademarks and
21 the Jack Daniel's Trade Dress, or any other mark or trade dress that is confusingly similar thereto;
22 and

23 (c) Manufacturing, advertising, promoting, displaying, shipping, offering for sale, selling,
24 or distributing any other alcoholic beverage that dilutes the distinctiveness of the famous JDPI
25 Trademarks and/or the famous Jack Daniel's Trade Dress; and

26 (d) Doing any other act or thing that is likely to cause persons to believe that Defendants'
27 goods or commercial activities originate with, or are licensed, sponsored, or authorized by, JDPI;

28 //

1 2. That Defendants be ordered, pursuant to 15 U.S.C. § 1116, to file with the Court and
2 to serve on counsel for JDPI, within 30 days after the entry of judgment herein, a written report under
3 oath setting forth in detail the manner in which it has complied with the injunction ordered by the
4 Court;

5 3. That Defendants be ordered, pursuant to 15 U.S.C. § 1118, to deliver up to the Court
6 for destruction or other disposition all labels, signs, prints, packages, wrappers, receptacles, and
7 advertisements and promotional materials showing the Accused Trade Dress or Accused Bottle, and
8 all plates, molds, matrices, and other means of making the same;

9 4. That Defendants be ordered, jointly and severally and pursuant to 15 U.S.C. § 1117(a),
10 to account for and pay to JDPI all of their profits from the sale of the Accused Whiskies bearing the
11 Accused Trade Dress or using the Accused Bottle, and that such profits be enhanced on the basis of
12 their willful infringement of JDPI's federally-registered marks, willful infringement of the Jack
13 Daniel's Trade Dress, willful false advertising, and willful unfair competition;

14 5. That Defendants be ordered, jointly and severally and pursuant to 15 U.S.C. § 1117(a),
15 to pay to JDPI all damages sustained by JDPI as a result of their infringement, false advertising, and
16 unfair competition, and that such award be trebled on the basis of their willful infringement of JDPI's
17 federally-registered marks, willful infringement of the Jack Daniel's Trade Dress, willful false
18 advertising, and willful unfair competition;

19 6. That the Court determine that this matter is an "exceptional case," and accordingly
20 that Defendants be ordered, jointly and severally and pursuant to 15 U.S.C. § 1117(a), to pay to JDPI
21 its attorneys' fees and the costs and expenses of this action;

22 7. That JDPI be granted such other and further relief as the Court may deem just and
23 proper.

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28 //

1 **DEMAND FOR JURY TRIAL**

2 Pursuant to Federal Rule of Civil Procedure 38, JDPI hereby demands a trial by jury on all
3 issues so triable.

4 Dated: April 20, 2018

Respectfully submitted,

5 HARVEY & COMPANY
6 D. PETER HARVEY
7 CAITLIN C. CONWAY

8 By: /s/ D. Peter Harvey
9 D. Peter Harvey

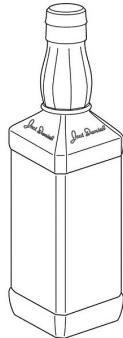
10 Attorneys for Plaintiff,
11 JACK DANIEL'S PROPERTIES, INC.

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EXHIBIT 1

United States of America

United States Patent and Trademark Office



Reg. No. 4,106,178

JACK DANIEL'S PROPERTIES, INC. (DELAWARE CORPORATION)
SUITE 528

Registered Feb. 28, 2012

4040 CIVIC CENTER DRIVE
SAN RAFAEL, CA 94903

Int. Cl.: 33

FOR: ALCOHOLIC BEVERAGES, NAMELY, DISTILLED SPIRITS, IN CLASS 33 (U.S. CLS.
47 AND 49).

TRADEMARK

FIRST USE 6-30-2011; IN COMMERCE 6-30-2011.

PRINCIPAL REGISTER

THE NAME(S), PORTRAIT(S), AND/OR SIGNATURE(S) SHOWN IN THE MARK DOES NOT
IDENTIFY A PARTICULAR LIVING INDIVIDUAL.

THE MARK CONSISTS OF THE THREE-DIMENSIONAL CONFIGURATION OF THE SQUARE
SHAPED BOTTLE CONTAINER FOR THE GOODS, HAVING AN EMBOSSED RIDGE OR
SCALLOPED DESIGN ON THE NECK PORTION OF THE BOTTLE, AND AN EMBOSSED
SIGNATURE DESIGN COMPRISED OF THE WORDS "JACK DANIEL".

SN 85-018,906, FILED 4-20-2010.

PAM WILLIS, EXAMINING ATTORNEY



A handwritten signature in black ink that reads "David J. Kappos".

Director of the United States Patent and Trademark Office

United States of America

United States Patent and Trademark Office



Reg. No. 4,106,179

JACK DANIEL'S PROPERTIES, INC. (DELAWARE CORPORATION)
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47 AND 49).

TRADEMARK

FIRST USE 6-30-2011; IN COMMERCE 6-30-2011.

PRINCIPAL REGISTER

OWNER OF U.S. REG. NOS. 1,942,451, 2,789,278, AND OTHERS.

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "BRAND" AND "TENNESSEE
SOUR MASH WHISKEY", APART FROM THE MARK AS SHOWN.

THE STIPPLING IS A FEATURE OF THE MARK AND DOES NOT INDICATE COLOR.

THE NAME "JACK DANIEL'S" DOES NOT IDENTIFY A LIVING INDIVIDUAL.

THE MARK CONSISTS OF THE STYLIZED WORDING "JACK DANIEL'S OLD NO. 7 BRAND
TENNESSEE SOUR MASH WHISKEY" AND AN OVAL SHAPED DESIGN IN THE CENTER
WITH A FILIGREE APPEARING AROUND THE BORDER.

SN 85-018,910, FILED 4-20-2010.

PAM WILLIS, EXAMINING ATTORNEY



A handwritten signature in black ink that reads "David J. Kappos". The signature is fluid and cursive, with "David J." on the first line and "Kappos" on the second line.

Director of the United States Patent and Trademark Office

Int. Cl.: 33

Prior U.S. Cls.: 47 and 49

United States Patent and Trademark Office

Reg. No. 1,923,981
Registered Oct. 3, 1995

**TRADEMARK
PRINCIPAL REGISTER**

JACK DANIEL'S

JACK DANIEL DISTILLERY, LEM MOTLOW,
PROP., INC. (KENTUCKY CORPORATION)
LYNCHBURG, TN 37352

FOR: WHISKEY, IN CLASS 33 (U.S. CLS. 47
AND 49).
FIRST USE 0-0-1875; IN COMMERCE
0-0-1875.

OWNER OF U.S. REG. NOS. 323,914, 441,002
AND OTHERS.

THE NAME "JACK DANIEL'S" DOES NOT
IDENTIFY A LIVING INDIVIDUAL.

SER. NO. 74-575,005, FILED 9-19-1994.

DONNA MIRMAN, EXAMINING ATTORNEY

Int. Cl.: 33

Prior U.S. Cl.: 49

United States Patent and Trademark Office
10 Year Renewal

Reg. No. 582,789

Registered Nov. 24, 1953

Renewal Term Begins Nov. 24, 1993

TRADEMARK
PRINCIPAL REGISTER

JACK DANIEL'S

JACK DANIEL DISTILLERY, LEM
MOTLOW, PROP., INC. (KENTUCKY
CORPORATION)
LYNCHBURG, TN 37352, BY ASSIGN-
MENT, ASSIGNMENT, ASSIGNMENT
AND CHANGE OF NAME FROM
JACK DANIEL DISTILLERY, LEM
MOTLOW, PROP., INC. (HENNESSIE
CORPORATION) LYNCHBURG, TN

OWNER OF U.S. REG. NOS. 298,102,
513,088 AND OTHERS.

FOR: WHISKEY, IN CLASS 49 (INT.

CL. 33).

FIRST USE 0-0-1875; IN COMMERCE
0-0-1875.

SER. NO. 71-634,575, FILED 8-28-1952.

*In testimony whereof I have hereunto set my hand
and caused the seal of The Patent and Trademark
Office to be affixed on Aug. 24, 1993.*

COMMISSIONER OF PATENTS AND TRADEMARKS

Registered Nov. 24, 1953

Registration No. 582,789

PRINCIPAL REGISTER
Trade-Mark

UNITED STATES PATENT OFFICE

Jack Daniel Distillery, Lem Motlow, Prop., Inc.,
Lynchburg, Tenn.

Act of 1946

Application August 28, 1952, Serial No. 634,575

JACK DANIEL'S

STATEMENT

Jack Daniel Distillery, Lem Motlow, Prop., Inc., a corporation duly organized and existing pursuant to the laws of the State of Tennessee, located and doing business at Lynchburg, county of Moore, in said State, has adopted and is using the trade-mark shown in the accompanying drawing, for WHISKEY, in Class 49, Distilled alcoholic liquors, and presents herewith five specimens showing the trade-mark as actually used in connection with such goods, the trade-mark being applied by printing or lithographing the same on labels that are fastened to the containers and requests that the same be registered in the United States Patent Office on the Princi-

pal Register in accordance with the act of July 5, 1946.

The trade-mark was first used on whiskey in 1875, and first used in commerce which may lawfully be regulated by the Congress, viz., commerce among the several States on whiskey in 1875. Such first usage was by applicant's predecessor, Jack Daniel, now deceased.

Applicant owns Registrations Nos. 298,102, 323,914, 394,017, 394,018, 441,002, and 513,088.

JACK DANIEL DISTILLERY,
LEM MOTLOW, PROP., INC.,

By REAGOR MOTLOW,
President.

COMB. AFF. SEC. 8 & 15

DEC 9 - 1952

EXHIBIT 2











REPOST: @DRINKINTEXAS







